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School Segregation Cases

The Last Round of Debate

THE second and probably last round in the historic debate over public school segregation took place before the Supreme Court during the second week of December. For months preceding the hearing, lawyers for the defendant states, the NAACP, and the U. S. Department of Justice had been digging into the musty records of the Reconstruction era for evidence of the intent behind the Fourteenth Amendment. The results of their researches were laid before the Court in several lengthy briefs, totaling more than 1,000 pages. The main purpose of the oral arguments on December 7, 8 and 9 was to give the Justices a chance to question the attorneys on their findings and recommendations.

The cases, which challenge segregation in the public schools of Clarendon County, S. C., Prince Edward County, Va., Wilmington, Del., Topeka, Kansas, and Washington, D. C., were previously argued before the Supreme Court a year ago. But in June, instead of handing down its long-awaited decision, the Court called for more arguments. (See *New South* for December, 1952, and July, 1953.) It posed five detailed questions, which may be briefly paraphrased as follows: Was the Fourteenth Amendment intended to prohibit segregated public schools? Was the Fourteenth Amendment intended to give the Supreme Court or Congress the power to outlaw school segregation? Apart from the preceding questions, does the Supreme Court have the authority to interpret the Fourteenth Amendment as prohibiting school segregation? If the Court finds segregation unconstitutional, does it have the power to order a gradual transition to non-segregated schools? How could such a gradual change-over be provided for? The Court specifically asked the U. S. Attorney General to take part in the arguments as a "friend of the court."

INTENT OF AMENDMENT

As might be expected, the questions concerning the legislative history of the Fourteenth Amendment elicited conflicting answers from the opposing counsel. The NAACP attorneys maintained "there is ample evidence that the Congress which submitted and the states which ratified the 14th Amendment contemplated and understood that the amendment would deprive the states of the power to impose any racial distinctions in determining when, where, and how its citizens would enjoy the various civil rights" and "the right to public school education was one of the civil rights with respect to which the states were deprived of the power to impose racial distinctions." On the other hand, attorneys for the states argued that neither Congress nor the states understood the Amendment as outlawing school segregation. They pointed out that the same Congress which submitted the Amendment in 1868 established separate public schools in the District of Columbia.

The Attorney General took a middle-of-the-road position on this point. His brief, after tracing the origin of the Amendment in some detail, held that the legislative history of the Amendment "is not conclusive."

The crucial point of disagreement was as to the power of the Supreme Court to strike down segregation on the authority of the Fourteenth Amendment. In their briefs, South Carolina, Virginia, and Kansas denied that the Amendment conferred any such power on either the Court or Congress. Their familiar thesis that classification of school children is a "states' right" subject only to the jurisdiction of the legislatures was reiterated in both the written and oral presentations. The noted constitutional lawyer, John W. Davis, who was retained by South Carolina, underscored the point by declaring: "This honored court cannot sit as a glorified board of education for South Carolina or any other state. It cannot sit in the chair of the Legislature of South Carolina and mold its educational system."

Attorneys for the NAACP and the Justice Department were just as unequivocal in their assertions that the Court has both the "power and the duty" to outlaw segregation. Under questioning by the Justices, they maintained that the failure of Congress to legislate against school segregation in no way diminished the Court's "responsibility" to put a judicial end to separate schools.

GRADUAL VS. IMMEDIATE

The alignment of the various parties shifted when it came to the question of gradual *versus* immediate relief for the plaintiffs. The NAACP urged a simple decree ordering the school officials involved to cease "forthwith" to make distinctions based on race or color. "In accordance with instructions of this Court," they declared, "we have addressed ourselves to all of the plans for gradual adjustment which we have been able to find. None would be effective."

The defendants and the Atorney General agreed that, if segregation were held unconstitutional, provision should be made for a gradual transition to integrated school systems. (See excerpts from the Attorney General's brief in this issue.)

As these points of constitutional law were solemnly discussed in the Supreme Court's chambers, the controversy proceeded in a more heated fashion in parts of the South. The filing of the Justice Department's brief — widely referred to as the "Brownell brief" — touched off a barrage of adverse comments by Southern political leaders. These ranged in intensity from Mississippi Rep. John Bell Williams' "shameful and disgraceful" to Alabama Lt. Gov. James B. Allen's "disillusioning." Many Southern newspapers also expressed strong disapproval, labeling the brief "inflammatory" and "political."

NON-PARTISAN ISSUE

Actually, as evidenced by the excerpts reprinted in this issue, the brief is dispassionate in tone, balanced in its analysis and moderate in its recommendations. The most obvious conclusion to be drawn from the nature of the brief was omitted by all but a few Southern newspapers, such as the *Arkansas Gazette* — namely, that there is no difference between the two major political parties on the issue of segregation. The "Brownell" brief essentially reaffirmed the "McGranery" brief of the preceding Democratic administration, thus testifying to the fact that racial policies are no longer a partisan matter in national politics. Neither a Republican nor a Democratic administration can realistically be expected to condone segregation in any area of public life.

Despite the adverse reaction to the Attorney General's brief, only two states have so far moved to meet an anti-segregation decision with drastic measures. Readers of *New South* are familiar with South Carolina's constitutional amendment, sponsored by Governor Byrnes and passed by the voters a year ago, which paves the way for the state to abandon public education. (The amendment is not yet in force, however, since the South Carolina Legislature has still to ratify it.)

In mid-November the Georgia Legislature followed South Carolina's lead, initiating this constitutional amendment: "The General Assembly may provide by law for grants of state, county, or municipal funds to citizens of the state for educational purposes in discharge of all obligations of the state to provide adequate education of its citizens." The purpose of this language,

(*Continued on Page 8*)

From the Attorney General's Brief

In response to the questions stated in the Court's order directing reargument of these cases, the United States respectfully submits (1) that the primary and pervasive purpose of the Fourteenth Amendment, as is shown by its history and as has repeatedly been declared by this Court, was to secure for Negroes full and complete equality before the law and to abolish all legal distinctions based on race or color; (2) that the legislative history of the Amendment in Congress is not conclusive; (3) that the available materials relating to the ratification proceedings in the various state legislatures are too scanty and incomplete, and the specific references to school segregation too few and scattered, to justify any definite conclusion as to the existence of a general understanding in such legislatures as to the effect which the Amendment would have on school segregation; (4) that it is within the judicial power to direct such relief as will be effective and just in eliminating existing segregated school systems; and (5) that if the Court holds that laws providing separate public schools for white and colored children are unconstitutional, it should remand the instant cases to the lower courts with directions to carry out the Court's decision as expeditiously as the particular circumstances permit (as indicated below) . . .

OBSTACLES TO INTEGRATION

In carrying out an adjustment from existing segregated school systems to new ones not based on color distinctions, the difficulties likely to be encountered fall into two groups: (1) those of an administrative nature; (2) those deriving from the fact that racial segregation in public schools has been in existence for many years in a large part of the country.

1. It is not difficult to envisage some of the kinds of administrative problems which may arise in giving effect to a holding that separate school systems are unconstitutional. Such a decision will necessarily result in invalidation of provisions of constitutions, statutes, and administrative regulations in many states. In many areas existing boundaries of school districts may require extensive revision. School authorities may wish to give pupils a choice of attending one of several schools, a choice now prohibited. Schools may have to be consolidated, teachers and pupils transferred, teaching schedules revised, and transportation arrangements altered.

LEGAL CHANGES

In jurisdictions (e.g., South Carolina, District of Columbia) where by statute the allocation of public school funds depends on the relative number of Negro and white children of school age, changes in the law may be required. In some jurisdictions (e.g., District of Columbia, Maryland) it may be necessary to eliminate duplication of functions arising from the existence of separate sets of supervisory and administration officials for white and Negro schools. In states (e.g., Miss., Tex.) which have statutory provisions for separate training schools for Negro teachers, the law may require amendment.

It is not unlikely that in many communities, particularly where separate white and colored residential districts still exist, abolition of segregation would produce no serious dislocations, and no wholesale transfers of teachers or pupils would occur. This could result from purely geographical factors, because the pupils of a school ordinarily reflect the composition of the population of the district in which it is located. The extent of the administrative and legal changes required will thus vary in the different jurisdictions involved, depending on these and other facts which now cannot be evaluated or measured. Accordingly, it is impossible to determine at this time what specific period of time would be required to overcome the administrative obstacles to school integration in any particular area.

In this connection it should be noted that financial cost, which would play so large a role in any program for "equalization" of separate schools, furnishes no substantial obstacle to integration. As the Attorney General of Virginia stated in his brief on the merits filed last term, "It is crystal clear that segregation is more expensive than amalgamation." It has been estimated that a capital outlay of as much as 2 billion dollars might be required in order to make the separate public schools for Negroes "equal," in a physical sense, to those now maintained for white pupils. On the basis of the 1949-50 level of *per capita* current expenditure for Negro pupils in the separate school areas, it has been estimated that it would take an additional $134,824,000 to bring the Negro expenditure up to that for the white pupils, an increase of almost 70 per cent. To raise the cost of transporting Negro pupils at the 1949-50 level to a par with that of transporting white pupils would entail an additional $55,574,582.*

POPULATION SHIFTS

An additional economic consideration favoring integration results from recent changes in the number and relative proportion of Negroes in the areas which maintain separate public schools for colored children. During the last decade there have been significant changes in the distribution of the Negro population of the country. There has occurred a significant shift of Negroes from the Southern to the Northern, Central, and Western states. A decline in the number and proportion of Negroes in the population has taken place in West Virginia, Georgia, Kentucky, Alabama, Mississippi, Arkansas and Oklahoma. The Middle Atlantic, East North Central, and Pacific States had the most appreciable increases in their Negro population, and the percentage increases for Negroes far exceeded those of the white population.

The financial burden of maintaining "separate but equal" public schools becomes increasingly onerous and unjustifiable as the Negro population in a particular area decreases. A community required to support for a handful of Negro children a separate school which must be physically equal in all respects to the schools it operates for white children is, from a purely economic standpoint, obviously not receiving the most for the money it expends for the education of its children. The same money, if expended for integrated schools, would result in greater educational benefits for both white and colored children. These economic considerations alone go far to indicate the relative feasibility of integration as a practical alternative to "equalization."

2. Some Southern leaders have expressed the view that considerable popular opposition will be met in the execution of any program for integration of public schools. . . . They predict that popular antagonism to elimination of segregation in public schools, arising from a traditional hostility to the mingling of the races, will most likely be reflected in withdrawal of state aid for those schools. On the other hand, the conviction has been expressed that these fears are exaggerated and unjustified, and that there is no reason to assume that, once this Court has authoritatively resolved the constitutional question, the people of the entire country, including the South, will not abide by its decision.

We believe it would be futile and irrelevant to enter into such speculation. Recent years have witnessed, on a fairly large scale, an ever-increasing trend toward the elimination of racial segregation and discrimination in all fields and in every part of the country. In almost every instance this progress has been accomplished without disorder or friction. Traditional attitudes on racial relations are in process of constant revision, particularly in the South

* * *

THE DECREES

On the basis of the foregoing, the considerations which appear to be relevant to the framing of the decrees in the present cases may briefly be summarized as follows:

1. The constitutional right involved in these cases is "personal and present." The plaintiffs can forcefully argue that the only remedy adequate to redress the existing,

*These estimates have been made by the Office of Education, Department of Health, Education and Welfare, on the basis of data contained in *Statistics of State School Systems 1949-1950*, being chapter 2 of the *Biennial Survey of Education in the United States* (1948-1950), published by the Office of Education, and in the article *School Building Unit Costs* about to be published in *School Life*, an organ of the Office of Education.

continuing violation of their constitutional rights is to direct their admission to non-segregated schools now and not at some future date when such relief would come, at least for some of them, too late to have any benefits. In the absence of compelling reasons to the contrary, vindication of constitutional rights should be as prompt and effective as is possible in the circumstances.

NATIONAL SIGNIFICANCE

2. On the other hand, the effects of a decision holding school segregation to be unconstitutional would not be limited to the areas and parties involved in the cases at bar. Such a decision would have national significance and consequences. As a binding precedent, the Court's decision would entail revision of school laws and procedures in at least seventeen States and the District of Columbia. Administrative and other obstacles will have to be overcome in order to accomplish the complete transition to non-segregated systems. The nature and extent of such problems will vary throughout the country, and the time required for eliminating school segregation in any particular community will depend on numerous factors which neither this Court nor counsel can now evaluate. Regardless of whether this Court should direct that school integration be carried out "forthwith" or "gradually," a brief period of time should be allowed for making necessary administrative adjustments.

3. In some places (such as the District of Columbia, Kansas and Delaware) the change-over to a non-segregated system should be a relatively simple matter, requiring perhaps only a few months to accomplish. In such areas, where there are no serious administrative or other impediments to integration, there can plainly be no valid justification for delay in ending exclusion of colored children from schools which they would otherwise be entitled to attend. In other areas, a longer period of time may be needed, depending on local conditions.

4. Despite a decision by this Court that racial segregation in public schools is unconstitutional, there will still remain many areas in which, as a practical matter, the schools will be attended by at least a preponderance of children of one color. This could arise from purely geographical factors, even though there is full compliance with the letter and the spirit of the decision. There are numerous communities characterized by exclusively Negro or white occupancy of particular residential sections. Even under normal school districting drawn on a wholly geographical and nonracial basis, the pupils of a public school in a district reflect the racial composition of its population. It may reasonably be assumed that this factor alone will have considerable effect in many areas in reducing the extent of the adjustments required by a decision prohibiting racial segregation in public schools.

5. There is no single formula or blueprint which can be uniformly applied in all areas where existing school segregation must be ended. Local conditions vary, and what would be effective and practicable in the District of Columbia, for example, could be inappropriate in Clarendon County, South Carolina. Only a pragmatic approach based on a knowledge of local conditions and problems can determine what is best in a particular place. For this reason, the Court of first instance in such area should be charged with the responsibility for supervision of a program for carrying out the Court's decision. This Court should not, either itself or through appointment of a special master, undertake to formulate specific and detailed programs of implementation adapted to the special needs of particular cases.

DEFENDANT'S BURDEN

6. The burden of (a) showing that, in the particular circumstances, a decree requiring the immediate admission of the plaintiffs to nonsegregated schools would be impracticable or inequitable, and, in that event, of (b) proposing, for the court's approval, an effective program for accomplishing transition to a nonsegregated system as soon as practicable, should rest on the defendants. As the responsible authorities in charge of the public schools, they would be in the best position to develop a program most suited to local conditions and needs, and to indicate the length of time required to put it into effect. In passing upon such a program, the lower court could receive the views not only of the parties but of interested persons and groups in the community. Such a locally-developed program for orderly and pro-

gressive transition to nonsegregation would tend to encounter less resistance and thus be more likely to achieve success.

* * *

The Government respectfully suggests to the Court that, if it holds school segregation to be unconstitutional, the public interest would be served by entering decrees in the instant cases providing in substance as follows:

(1) That racial segregation in public schools be decreed by this Court to be a violation of rights secured by the Constitution;

(2) That each case be remanded to the appropriate court of first instance for such further proceedings and orders as are necessary and proper to carry out the Court's decision;

(3) That the lower courts be directed on remand to enter decrees under which the defendants shall forthwith be enjoined from using race or color as a basis for determining admission of children in public schools under their authority or control; provided, however, that if the defendants show that it is impracticable or inequitable to grant the plaintiffs the remedy of immediate (i.e., at the beginning of the next school term) admission to nonsegregated schools, the court shall order the defendants to propose and, on approval by the court after a public hearing, to put into effective operation a program for transition to a nonsegregated school system as expeditiously as the circumstances permit;

(4) That for the accomplishment of these purposes, taking into view the difficulties which may be encountered, a period of one year be allowed from the receipt of this Court's mandate, with leave, however, in the event, in the judgment of the lower court, the necessities of the situation so required, to extend such period for a further reasonable time; and that, in the event before the expiration of the period thus fixed, a condition in harmony with the requirements of the Constitution is not brought about, it shall be the duty of the lower court to enter appropriate orders, by way of injunction or otherwise, directing immediate admission of the plaintiffs to nonsegregated schools; and

(5) That this Court retain jurisdiction for the purpose of making such further orders and decrees, if any, as may become necessary for carrying out its mandate.

A Stance for the Time Being

From the Asheville Citizen

Attorney General Brownell's brief to the Supreme Court in the five public school segregation cases apparently was stronger and more far-reaching than most persons had anticipated. The Court, said Mr. Brownell, rather than the Congress, had the responsibility to enforce the "equal rights" provisions of the 14th Amendment.

This is a dictum of duty pronounced by one branch of the Government to another. It has provoked angry protests, most of which make the mistake of impugning the sincerity of the Attorney General. Whatever Mr. Eisenhower's supporters in the South may have expected of him last year, his Administration surely has nothing to gain with already hostile voting groups by taking an advanced position on school segregation. And as for telling the Court what to do, why of course it has been told before — by the state attorneys general, by governors and by other litigants. Indeed, everybody is telling the Supreme Court.

It seems to us that the part of wisdom in this newly aggravated situation is judicious silence from non-parties to what is, after all, a legal formality just now, and the entertainment of some considerable hope. Silence, in responsible places, lest the matter overleap any emotional restraint. Hope, in the same places, that the Supreme Court will appreciate the peculiar problem of the 17 school segregation states and give them time — a lot of it — to make inevitable adjustments.

Indeed, this is the attitude taken in exemplary fashion by Governor Umstead, whose genuine concern for the outcome still does not lead him to panicky anticipation. . . . A stance of calmness and hopefulness has much to recommend itself to all Americans of good patriotic posture.

THE SOUTH FACES A FACT

By Ralph McGill, in the *Atlanta Constitution*

What the various Southern state legislatures are doing, as they busy themselves with plans to carry on school segregation without legal compulsion, is admitting segregation by law is finished . . . either this year, next or within the next few to come.

It is. There is no need beating about the bush. It, therefore, seems important that we discuss the problem as rationally as possible.

There are those who insist that segregation protects the "integrity" of both races. There are others who believe, with deep sincerity, Negroes are "better off" under it. Conceivably this might be argued with some logic. It does not matter. The world, in the throes of a social revolution which began with the coming of the industrial revolution, and which was tremendously accelerated by two great world wars, has moved on. Segregation by law no longer fits today's world.

Southern legislatures busy with plans to maintain some form of segregation without legal compulsion are wise to face that fact — though there are questions as to the wisdom of some of the proposals they make.

As a matter of fact, segregation has been on its way out for a good long time and has been breaking down at the edges for more than a generation. Surprisingly few Southerners, or Americans of other areas, know that for some years Negroes have been attending, and graduating from, medical, law and other professional schools in state universities in the South.

In the field of employment, segregation has for some years been changing, and in many other fields it also shows the signs, and influences, of our time.

Two great forces have been at work on segregation and the problem of race. One is secular, the other religious. The Christians of today cannot help but wince at the full implications, and the jarring clash of his creed, with discrimination against any person because of color. To send missionaries to colored peoples and then to argue that because of the color of skin the two may not, if they choose so to do, worship the same God together is an impossible contradiction.

Indeed, it is this very fact which causes our Communist enemies to be able to present us in a bad light before the Oriental and Asiatic peoples. They can say, with some truth, that our claims to Christian brotherhood and democracy are hypocritically untrue.

Christianity cannot well afford to be on the wrong side of a moral force, as it was in some areas when it defended slavery.

The other influence is secular. Segregation implies inferiority. There are those who argue that it does not. But, those segregated believe it does. There are those who say the fish never feels the hook. But, unfortunately, it is not possible to ask the fish. Across two great wars now we, along with other free peoples, have preached the rights of men everywhere to be free and equal — we have encouraged long-oppressed peoples to rise. They have done so, and to date the Communists, with great shrewdness, have exploited successfully many of these nationalistic revolutions.

An end to segregation — when it comes — will not, of course, force people to associate socially. That will remain, as now, personal choice. But, it will bring on change — and this is what state legislatures in South Carolina, Georgia, Mississippi, Virginia and Alabama are, or will be, considering. They consider not how to retain legal segregation — which they see soon ending — but how to effect it without legal compulsion.

Their great opportunity is to do so without violence or rash deeds which later will have to be undone at great cost.

So, while it is true that much of the push behind ending segregation is political, and that many of those in both parties urge it hypocritically, it does not change the basic fact — segregation is on its way out and he who tries to tel the people otherwise does them great disservice. The problem of the future is how to live with the change.

The Last Round

(*Continued from Page 2*)

as explained by Governor Herman Talmadge, is to evade any court decision against segregation by converting Georgia's public schools to private operation. Under this plan, state school funds would be paid directly to school children, who would then turn them over to the "private" schools designated by the state.

Since Governor Talmadge had announced several weeks earlier that no such measure would be proposed in the November legislative session, educational, church, and civic leaders were caught off-guard. The bill was passed overwhelmingly by the Legislature. Nevertheless, during the brief period when the measure was under consideration, opposition to it mounted day by day. For example, the executive board of the Women's Society of Christian Service of the North Georgia Methodist Conference strongly opposed the bill as a threat to decent standards of education.

> The proposed amendment, said the Methodist women, "raises far more than political questions. It poses civic and moral questions of great urgency, for it directly involves the future opportunity and welfare of every child in Georgia. The children cannot speak in their own behalf. We can, and in all conscience we feel that we must. . . . Ours is a nation founded on respect for law and the courts. Attempts to defy or evade the law of the land attack the very foundation of our republic. Such subterfuges have not succeeded in the past and are unworthy of a great state and a great people."

The fate of the Georgia proposal now rests with the people, who will vote on it at the general election of November, 1954. But in Mississippi an effort to pass a similar measure failed in the state senate, thus leaving undisturbed Mississippi's constitutional obligation to afford its children free public education.

Other states, too, made it clear that they favored no such extreme course as that adopted by South Carolina and Georgia. Arkansas' Governor Francis Cherry declared: "As a lawyer, it is not my place to comment on a possible decision not yet handed down by the Supreme Court. That Court's decision must be based on evidence, and public opinion has nothing to do with it. We will have to abide by whatever decision is handed down because that will be the law."

In Florida, State School Superintendent Thomas D. Bailey expressed the belief that a court ruling against segregation would permit a period of adjustment. "I think enough time is going to be allowed to work out the problem and avoid confusion and shock," he said. "We've enjoyed excellent relations between white and Negro citizens in Florida and I see no reason why this problem should do anything to disturb those relations. . . . If we must end segregation then we'll go about it with common sense and careful deliberation."

Governor Umstead of North Carolina added dignity to his office by his comment. While expressing the hope that the Court will not upset the existing system of segregated schools, he added that he does not intend to make political gestures toward the justices but will trust them to make their decision according to law rather than political pressures.

In short, though the irresponsible voices were loudest, calmness and reason prevailed in most of the South as the time of decision approached.

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